

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

People v. Green

2026 NY Slip Op 03333 (N.Y. Ct. App. 2026) · No. 111780, CR-23-1817 · Decided May 28, 2026

SUMMARY

The Appellate Division, Third Department, affirmed a judgment convicting Kevin Green upon his guilty plea to criminal possession of a weapon in the second degree and an order denying his CPL 440.10 motion to vacate the conviction. The court held that Green's unchallenged appeal waiver precluded review of his suppression, sentencing, and certain ineffective-assistance claims, and that his remaining claims were either unpreserved or improperly raised under CPL article 440 because they could have been presented on direct appeal.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Ryba, J.; Aarons, J.P.; Reynolds Fitzgerald, J.; Powers, J.; Corcoran, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	May 28, 2026
DOCKET	111780, CR-23-1817
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment convicting him upon his guilty plea of criminal possession of a weapon in the second degree and, by permission, from an order denying his CPL 440.10 motion to vacate the judgment of conviction without a hearing.
STANDARD OF REVIEW	The court reviewed the appeal-waiver and preservation issues as matters of law and reviewed the denial of the CPL 440.10 motion under the statutory post-conviction-relief framework, including whether the claims were reviewable on direct appeal under CPL 440.10(2)(b).
PRECEDENTIAL VALUE	Published New York intermediate appellate opinion; precedential within the Third Department subject to later modification or reversal.
PARTIES	Kevin Green v. The People of the State of New York

TOPICS

state post-conviction relief appellate procedure plea bargaining ineffective assistance
preservation of error

PRACTICE AREAS

criminal procedure post-conviction relief appellate procedure plea bargaining ineffective assistance

QUESTIONS PRESENTED

1. Whether defendant's challenges to the suppression of statements and physical evidence and to the severity of his sentence were precluded by his unchallenged appeal waiver.
2. Whether defendant's ineffective-assistance claim survived the appeal waiver as a challenge to the voluntariness of his guilty plea.
3. Whether defendant's ineffective-assistance claim was preserved for appellate review absent a postallocation motion.
4. Whether County Court properly denied defendant's CPL 440.10 motion alleging lack of jurisdiction, fraud or misrepresentation, and constitutional violations where defendant offered no nonrecord evidence and the claims could have been raised on direct appeal.

HOLDINGS

1. Because defendant did not challenge the validity of his appeal waiver, his claims concerning suppression of statements and physical evidence and the purported harshness of his sentence were precluded from appellate review.
2. An ineffective-assistance claim can survive an appeal waiver when it is tied to an assertion that the guilty plea was not knowing and voluntary, but defendant's claim here was precluded because the alleged attorney misconduct occurred before the plea proceeding and did not affect the plea's voluntariness.
3. Defendant's claim that counsel's conduct affected the voluntariness of his guilty plea was unpreserved because he did not make an appropriate postallocation motion, and the narrow exception to the preservation rule did not apply.
4. County Court properly denied defendant's CPL 440.10 motion because his claims, which were supported by no nonrecord evidence, could have been addressed on direct appeal; CPL article 440 was therefore an improper avenue for relief under CPL 440.10(2)(b).

KEY QUOTATIONS

“unpreserved for our review in the absence of an appropriate postallocation motion” ([*1]-[*2])

FACTUAL BACKGROUND

In early June 2018, police responded to 911 calls reporting shots fired near 80 West Pier Pont Street in Kingston, Ulster County. The ensuing investigation led to defendant's arrest and indictment on weapons and reckless-endangerment charges. Defendant pleaded guilty to second-degree criminal possession of a weapon, waived his right to appeal, and received a sentence of seven years' imprisonment followed by five years of postrelease supervision.

PROCEDURAL HISTORY

Defendant was indicted for criminal possession of a weapon in the second degree, two counts of criminal possession of a weapon in the third degree, and reckless endangerment in the first degree. He pleaded guilty to criminal possession of a weapon in the second degree in full satisfaction of the indictment and waived his right to appeal. County Court sentenced him as a second felony offender to seven years' imprisonment followed by five years of postrelease supervision. County Court later denied his CPL 440.10 motion in its entirety, and the Appellate Division affirmed both the judgment and the order.

DISPOSITION

affirmed

CASES CITED

- People v. Jean-Pierre, 203 A.D.3d 1226, 1227-1228 (3d Dep't 2022), leave to appeal denied, 38 N.Y.3d 1033 (2022)
- People v. Nack, 200 A.D.3d 1197, 1199 (3d Dep't 2021), leave to appeal denied, 38 N.Y.3d 1009 (2022)
- People v. Rodriguez, 217 A.D.3d 1012, 1013 (3d Dep't 2023)
- People v. Hart, 188 A.D.3d 1424, 1425 (3d Dep't 2020), leave to appeal denied, 36 N.Y.3d 1051 (2021)
- People v. Carden, 233 A.D.3d 1096, 1096 (3d Dep't 2024), leave to appeal denied, 43 N.Y.3d 929 (2025)
- People v. Stanley, 189 A.D.3d 1818, 1818 (3d Dep't 2020)
- People v. Willetts, 234 A.D.3d 1020, 1020 (3d Dep't 2025), leave to appeal denied, 43 N.Y.3d 966 (2025)
- People v. Carota, 235 A.D.3d 1069, 1071 (3d Dep't 2025), leave to appeal denied, 43 N.Y.3d 962 (2025)
- People v. Hooker, 230 A.D.3d 1465, 1468 (3d Dep't 2024)